

WATER SUPPLY & GROWTH IN THE CLARK FORK BASIN

March 11, 2008

WHO MAKES WHAT DECISION IN
PLANNING FOR GROWTH

Regarding Water Right Issues

Bill Schultz, DNRC Water Resources,
Missoula Regional Office

WHO MAKES WHAT DECISION IN PLANNING FOR GROWTH

- DEVELOPMENT REQUIRES WATER
 - MUNICIPAL, DOMESTIC, LAWN & GARDEN IRRIGATION, COMMERCIAL, INDUSTRIAL USES

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 - MUNICIPAL, DOMESTIC, LAWN & GARDEN IRRIGATION, COMMERCIAL, INDUSTRIAL USES
- THE RIGHT TO USE WATER REQUIRES WATER RIGHT
- DECISION AUTHORITY ON ISSUANCE OF WATER RIGHT PERMITS & CHANGES RESTS WITH MT DNRC WATER RESOURCES DIVISION

WHO MAKES WHAT DECISION IN PLANNING FOR GROWTH

DNRC WATER RIGHT DECISIONS:

NO OBJECTIONS OR OBJECTIONS SETTLED:
DNRC WRD **REGIONAL MANAGER**

OBJECTIONS LEADING TO A HEARING:
DNRC **HEARINGS EXAMINER**

DNRC HEARING EXAMINER'S FINAL ORDER:
MAY BE APPEALED TO **DISTRICT COURT**

WHO MAKES WHAT DECISION IN PLANNING FOR GROWTH

CLARK FORK BASIN REGIONS BY COUNTY

HELENA REGIONAL OFFICE (406-444-6999)

Jan Langel, Regional Manager

DEER LODGE, LEWIS&CLARK, POWELL, & SILVER BOW

MISSOULA REGIONAL OFFICE (406-721-4284)

Bill Schultz, Regional Manager

GRANITE, MINERAL, MISSOULA & RAVALLI

KALISPELL REGIONAL OFFICE (406-752-2288)

Terry Eccles, Regional Manager

FLATHEAD, LAKE, LINCOLN, & SANDERS

WHO MAKES WHAT DECISION IN PLANNING FOR GROWTH

WATER RIGHT PERMIT

&

CHANGE AUTHORIZATION

ISSUANCE CRITERIA

ESTABLISHED IN STATUTE

85-2-311 MCA (PERMITS)

<http://data.opi.state.mt.us/bills/mca/85/2/85-2-311.htm>

85-2-402 MCA (CHANGES)

<http://data.opi.state.mt.us/bills/mca/85/2/85-2-402.htm>

Legal Requirements for Permit Applications

- **MCA 85-2-311**

Applicant must prove the criteria:

- **Water is physically available**
- **Water is legally available**
- **Water rights of prior appropriator will not be adversely affected**
- **Proposed means of diversion, construction & operation are adequate**
- **Proposed use is a beneficial use of water**
- **Possessory interest in the place of use**
- **Water quality of prior appropriator not affected (only if objection)**

Legal Requirements for Change Applications

- **MCA 85-2-402**

Applicant must prove the criteria

- **Proposed change will not adversely affect the use of existing water rights**
- **Proposed means of diversion, construction & operation are adequate**
- **Proposed use is a beneficial use of water**
- **Applicant has possessory interest in the place of use**
- **Water quality of an appropriator not adversely affected (only if objection)**

Criteria Assessment

- If no objections and,
- Criteria in 85-2-311(permit) or 402 (change) are met
 - Mitigation plan approved (closed basins)
 - Criteria Assessment is prepared to document information and evidence submitted by the applicant proving the criteria in 85-2-311 or 402 has been met
 - Permit or Change Authorization issued

Statement of Opinion

- If no objections and,
- Evidence on criteria (85-2-311 or 402) not sufficient to prove by a preponderance of evidence
 - Statement of Opinion is prepared to document information and evidence submitted by applicant on criteria that have been met
 - Identify and document why criteria not met
 - Propose to modify or deny
 - Applicant may request show-cause hearing within 30 days

Hearing

- Objections received and copies sent to applicant
- Regional office may help with mitigation
- Application submitted to Hearings Unit for scheduling
- Examiner appointed and hearing date set
- Hearing held, Proposal for Decision issued
- Exceptions may be filed with a request for Oral Argument
- Oral Argument hearing held (if requested)
- Final Order issued
- Appeal to District Court an option

NOTICE OF COMPLETION OF GROUND WATER DEVELOPMENT

- ✓ File Within 60 Days After Project Completion and Use of Water
- ✓ Ground Water Developments With a Maximum Use of 35 Gpm and up to 10 Acre-feet
- ✓ Includes Wells, Developed Springs, and Ground Water Pits
- ✓ Criteria:
 - **Possessory Interest in Place of Use**
 - **Exclusive Rights in Ground Water Development Works or Can Obtain Written Consent of Person With Those Rights**

<http://data.opi.state.mt.us/bills/mca/85/2/85-2-306.htm>

Water Right Application Analysis

HOW DOES DNRC ANALYZE PHYSICAL
AND LEGAL AVAILABILITY OF WATER?

Reference: Water Right Bureau New
Appropriation Rules (January 1, 2005)

http://www.dnrc.mt.gov/wrd/water_rts/appro_rules_ref/newappropriations_rules_1-05.pdf

ANALYSIS OF PHYSICAL AVAILABILITY SURFACE WATER

- STANDARDS LISTED IN NEW APPROPRIATION RULES @ 36.12.1702.
- SUBSTANTIAL CREDIBLE INFORMATION SHOWING WATER AVAILABLE AT REQUESTED FLOW RATE, VOLUME, & PERIOD OF USE.
 - STREAM GAGING RECORDS
 - ACCEPTED ESTIMATION METHODS WITH VALIDATION MEASUREMENTS
 - COLLECTION OF STREAM DISCHARGE DATA REQUIRED IF GAGING STATION DATA NOT AVAILABLE.

ANALYSIS OF PHYSICAL AVAILABILITY GROUNDWATER

- STANDARDS LISTED IN NEW APPROPRIATION RULES @ 36.12.1703.
- SUBSTANTIAL CREDIBLE INFORMATION SHOWING WATER AVAILABLE FROM SOURCE AQUIFER IN THE AMOUNT REQUESTED.
 - EVALUATION OF DRAWDOWN FOR MAX PUMPING RATE AND VOLUME
 - PROJECTED DRAWDOWN COMPARED TO HEIGHT OF WATER COLUMN ABOVE PUMP
 - AQUIFER TEST REQUIREMENTS @ 36.12.121 APPLY
 - 24 HOUR TEST (<150 GPM & 50 AC FT); 72 HOUR (>)

ANALYSIS OF LEGAL AVAILABILITY **SURFACE WATER & GROUNDWATER**

- STANDARDS LISTED IN NEW APPROPRIATION RULES @ 36.12.1705.
- COMPARE PHYSICAL WATER SUPPLY AT POD AND THE LEGAL DEMANDS (SENIOR WATER RIGHTS) WITHIN AREA OF POTENTIAL IMPACT.

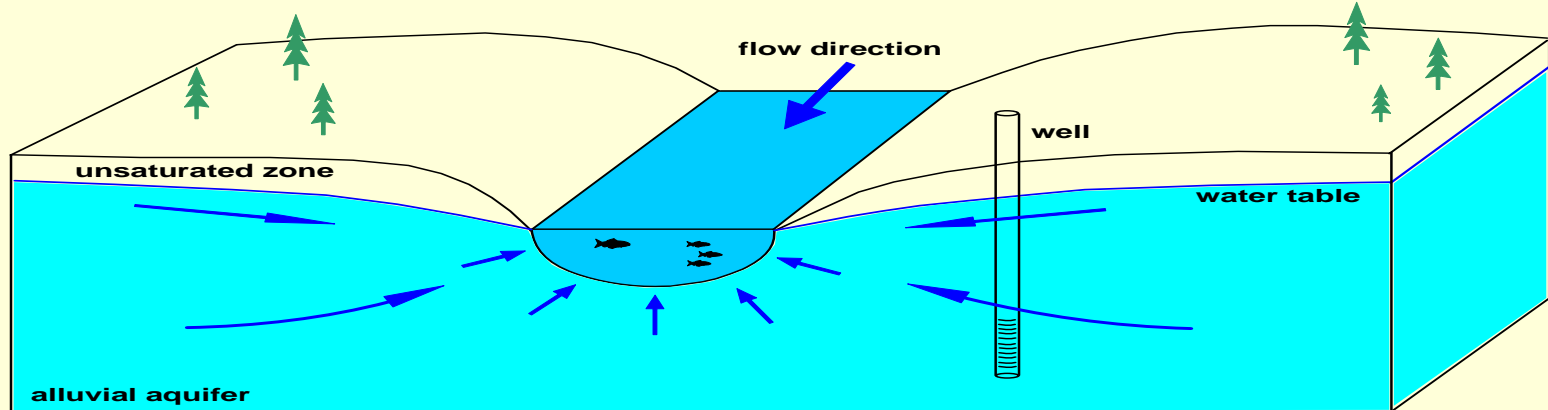
Water Right Application Analysis

HOW DOES DNRC REGULATE
INTERACTION BETWEEN SURFACE
WATER & GROUNDWATER?

Reference: HB 831 Codified @ 85-2-360–369 MCA

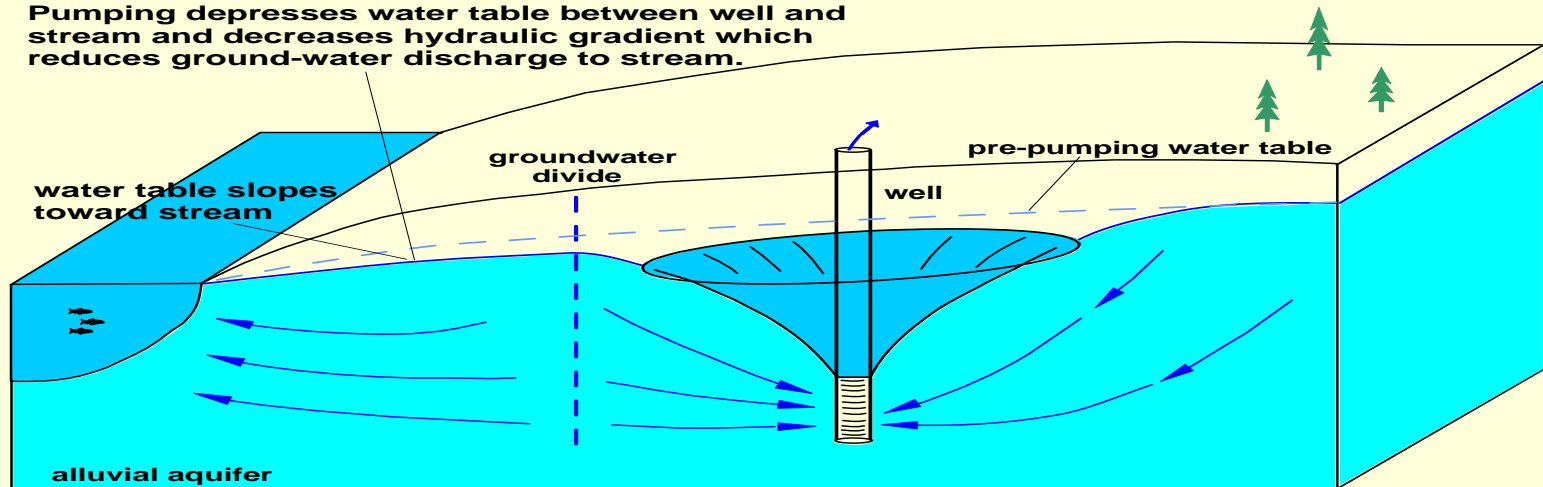
<http://data.opi.state.mt.us/bills/mca/85/2/85-2-360.htm>

Example: Pumping Impacts on Gaining Stream



Quantity of ground water discharging to stream is governed by Darcy's Law.

Pumping depresses water table between well and stream and decreases hydraulic gradient which reduces ground-water discharge to stream.



Ground water intercepted by well would have eventually discharged to stream; results in streamflow diminishment.

HB 831 Groundwater Applications

(closed basins)

- Hydrogeologic Assessment (85-2-361)
 - Analysis and Prediction of Net Depletion (ND) to surface water
 - Analysis of potential for Net Depletion to cause adverse affect
- Mitigation or Aquifer Recharge Plan, if ND results in adverse affect (85-2-362)

NET DEPLETION

- NET DEPLETION ANALYSIS REQUIREMENTS SPECIFIED IN 85-2-361 MCA & ADMINISTRATIVE RULE
- HYDROGEOLOGIC ASSESMENT REVIEWED BY DNRC TECHNICAL STAFF

Hydrogeologic Assessment Review

- Staff hydrogeologist reviews assessment
- All statutory and administrative rule requirements are met
- The information, data and analysis are substantial credible and conform to accepted scientific standards
- If not, hydrogeologist prepares discussion memo on issues needing further information, data or clarification

Hydrogeologic Assessment Review

- HYDROGEOLOGIC ASSESSMENT & MITIGATION PLAN (CHANGE APPLICATION) FACTORS USED TO DETERMINE LEGAL AVAILABILITY & ADVERSE EFFECT CRITERIA.

***DEPT. OF NATURAL RESOURCES AND
CONSERVATION***

**Water Resources Division
1424 9TH Avenue
PO Box 201601
Helena, MT 59620-1601**

WATER RESOURCE REGIONAL OFFICES

**BILLINGS, BOZEMAN, LEWISTOWN, GLASGOW, HAVRE,
KALISPELL, MISSOULA, HELENA**

**For Water Right research: Natural Resource Information System,
State Library -- <http://nris.mt.gov/dnrc/waterrights>**

Permit/Change Timelines

- 180 days to Notify Applicant of Deficiencies (85-2-302(5) MCA)
- 90 days for Applicant to Respond to Deficiencies (85-2-302(6) MCA)
- Public Notice Period is 15 to 60 days. Generally 30 days (85-2-307(2)MCA)
- Decision to Grant, Deny or Condition an Application (85-2-310 MCA):
 - 120 Days if No Objection
 - 180 Days if Hearing Held
 - 60 Day Extension
 - Waiver of Decision Timelines

CONCLUSIONS

- Decision to Grant, Deny, Condition Water Right Permit Applications & Change Authorizations - MT DNRC Water Resources Division
- Issuance Criteria Specified In Statute
- Meeting Criteria Requires Substantial Credible Technical Information
- Special Considerations in Closed Basins

THANK YOU

